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State of New Jersey
Department of Labor and
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RE: Adopted Joint Emergency Amendments and Concurrent Joint Proposed Amendments:

N.J.A.C. 8:60-2.1, 3.2 and 9.1; and 12:120-2.1, 3.2 and 9.1

Adopted Joint Emergency New Rules and Concurrent Joint Proposed New Rules:

N.J.A.C. 8:60 Appendix and 12:120 Appendix

Attached please find the above-referenced matter which was published in the June 5, 2006 *New Jersey Register*.

If you have any questions, please contact David Fish, Regulatory Officer at (609) 292-2789.

EMERGENCY ADOPTION

HEALTH AND SENIOR SERVICES

(a)

PUBLIC HEALTH PROTECTION AND EMERGENCY PREPAREDNESS

LABOR AND WORKFORCE DEVELOPMENT

DIVISION OF PUBLIC SAFETY AND OCCUPATIONAL SAFETY AND HEALTH

Asbestos Licenses and Permits Testing of Bulk Material Samples

Adopted Joint Emergency Amendments and Concurrent Joint Proposed Amendments: N.J.A.C. 8:60-2.1, 3.2, and 9.1; and 12:120-2.1, 3.2 and 9.1

Adopted Joint Emergency New Rules and Concurrent Joint Proposed New Rules: N.J.A.C. 8:60 Appendix and 12:120 Appendix

Joint Emergency Amendments and New Rules Adopted and
Concurrent Joint Proposed Amendments and New Rules
Authorized: April 21, 2006 by David J. Socolow, Acting
Commissioner, Department of Labor and Workforce
Development and April 24, 2006 by Fred M. Jacobs, M.D., J.D.,
Commissioner, Department of Health and Senior Services.

Adopted Joint Emergency Amendments and New Rules Filed: May
15, 2006 as R.2006 d.214.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): April 28, 2006.

Authority: N.J.S.A. 34:5A-32 et seq., specifically N.J.S.A. 34:5A-
39.

Calendar Reference: See Summary below for explanation of
exception to calendar requirement.

Concurrent Proposal Number: PRN 2006-191.

Emergency Amendments and New Rules Effective Date: May 15,
2006.

Emergency Amendments and New Rules Expiration Date: July 14,
2006.

A public hearing regarding the concurrent proposed amendments and
new rules will be held on the following date at the following location:

Friday, June 23, 2006

10:00 AM. to 12:00 Noon

New Jersey Department of Labor and Workforce Development

John Fitch Plaza

13th Floor Auditorium

Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-
2789 if you wish to be included on the list of speakers.

Submit written comments by July 5, 2006 to:

David Fish, Regulatory Officer

Office of Legal and Regulatory Services

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These amendments and new rules were adopted on an emergency basis
and became effective upon acceptance for filing by the Office of
Administrative Law (see N.J.S.A. 52:14B-4(c) and N.J.A.C. 1:30-4.4).
Concurrently, the provisions of these emergency amendments and new
rules are being proposed for readoption in accordance with the normal
rulemaking requirements contained in the Administrative Procedures Act,

N.J.S.A. 52:14B-1 et seq. and the Rules for Agency Rulemaking,
N.J.A.C. 1:30. The readopted amendments and new rules become
effective upon acceptance for filing by the Office of Administrative Law
(see N.J.A.C. 1:30-4.4(d)) if filed on or before the emergency
amendments' and new rules' expiration date.

The emergency joint adoption and concurrent proposal follow:

Summary

The emergency joint adopted and concurrent joint proposed
amendments and new rules at N.J.A.C. 8:60 and 12:120 pertain
specifically, with a single exception, to the testing of bulk material
samples (as opposed to air samples) for purposes of determining whether
they contain asbestos and, therefore, whether a contractor who is
applying, enclosing, repairing, removing or encapsulating those materials
or who enters into any contract with the owner or owner's representative
for the employer to perform such work or services must be licensed to do
so by the Department of Labor and Workforce Development under
N.J.S.A. 34:5A-32 et seq. and the rules promulgated in accordance
therewith, N.J.A.C. 8:60 and 12:120. Essentially, those emergency
adopted and concurrent proposed amendments and new rules which
pertain to the testing of bulk samples would require that the Department
of Labor and Workforce Development and the Department of Health and
Senior Services (hereafter, referred to as "the Departments") utilize
transmission electron microscopy (TEM), where appropriate, for the
testing of bulk building materials, in accordance with the "Method for the
Determination of Asbestos in Bulk Building Materials" (EPA/600/R-
93/116) (hereafter, referred to as "the 1993 Method"), rather than
utilizing only polarized light microscopy (PLM), in accordance with the
"Interim Method for the Determination of Asbestos in Bulk Insulation
Samples," which appears at 40 CFR Part 763, Appendix E to Subpart E,
(hereafter, referred to as "the 1982 Method").

Within the emergency adopted and concurrent proposed amendments,
the sole amendment pertaining to the testing of air samples (as opposed to
bulk material samples) would replace the existing reference within the
definition of TEM to "National Institute of Occupational Safety and
Health (NIOSH) method 7402 as referenced in the 4th Edition, August
15, 1994 with addenda of the NIOSH Manual of Analytical Methods"
with the reference to "40 CFR Part 763, Subpart E, Appendix A to
Subpart E - 'Interim Transmission Electron Microscopy Analytical
Methods — Mandatory and Non-mandatory — And Mandatory Section to
Determine Completion of Response Actions,' incorporated herein by
reference, as amended and supplemented." Whereas the former method is
a complementary method for the occupational setting which calls for the
counting only of asbestos fibers, the latter method contains
comprehensive sampling and analytical protocols which call for the
counting of all asbestos structures. When analyzing air samples, all
licensed contractors should utilize the comprehensive method set forth
within the federal regulations at 40 CFR Part 763, Subpart E, Appendix A
to Subpart E. The Departments' existing reliance within the definition of
TEM upon the NIOSH standard, rather than the established federal
regulatory standard for the analysis of air samples, is an error. In fact,
elsewhere within N.J.A.C. 8:60 and 12:120 (specifically, at N.J.A.C.
8:60-4.7(c)1ii and 12:120-4.7(c)1ii) the Departments already require that
every licensee shall provide for final inspection upon completion of a
project, that as part of that final inspection a sufficient number of air
samples shall be taken to be representative of the work area, and that for
abatement actions greater than or equal to 160 square feet, or greater than
or equal to 260 linear feet, clearance air sampling shall be conducted by
TEM in accordance with 40 CFR 763.90(i)(3) and (4). This reliance
within the substantive (as opposed to the definitions) portion of N.J.A.C.
8:60 and 12:120 upon the federal standard, rather than the NIOSH
standard, for the analysis of air samples, is illustrative of the error which
the Department is seeking to correct. Again, it is the Departments' intent
through the subject amendment to correct that error.

By way of background, with regard to the amendments and new rules
which pertain to the testing of bulk building materials, N.J.S.A. 34:5A-36

states that no employer shall either directly or indirectly perform any of the functions of application, enclosure, removal, or encapsulation of asbestos in any structure, nor enter into any contract with the owner or the owner's representative for the employer to perform such work or services, without first obtaining a nontransferable license from the Commissioner of Labor and Workforce Development, except private employers subject to the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. §§651 et seq.) who use their own employees to apply, enclose, remove, repair or encapsulate asbestos in their own facility, or as otherwise exempted pursuant to N.J.S.A. 34:5A-43, N.J.A.C. 8:60-3.2(a) and 12:120-3.2(a), promulgated by the Department of Health and Senior Services and the Department of Labor and Workforce Development in accordance with N.J.S.A. 34:5A-32 et seq., require that every employer who performs any of the functions of application, enclosure, repair, removal or encapsulation of asbestos in any structure, or who enters into any contract with the owner or owner's representative for the employer to perform such work or services, shall comply with the provisions of N.J.A.C. 8:60 and 12:120 and shall be issued a nontransferable license by the Commissioner of Labor and Workforce Development. Material is considered to be "asbestos-containing" if it contains more than one percent asbestos. See N.J.S.A. 34:5A-34, N.J.A.C. 8:60-2.1 and N.J.A.C. 12:120-2.1.

Although existing N.J.A.C. 8:60 and 12:120 do not indicate a particular analytical methodology for use by the Departments in determining whether a material being removed from a worksite is, in fact, "asbestos-containing material," the Departments have been utilizing the analytical method which is recommended, but not required, by the Federal Environmental Protection Agency (EPA) for use in testing bulk materials, namely, the 1993 Method. It is explained in an EPA Advisory that the 1993 Method improves upon the 1982 Method in that it "can provide more precise analytical results especially at low asbestos concentrations, enhanced analysis of floor tiles which may contain thin asbestos fibers below the limits of resolution of the polarized light microscope (PLM), and clearer instruction on the analysis of bulk materials, particularly where multiple layers are present." 59 FR 38970. The EPA Advisory goes on to state that,

The improved method [the 1993 Method] addresses the thin fiber limitation of the 1982 method by providing directions for using transmission electron microscopy (TEM). The test method [the 1993 Method] includes improved procedures for reducing matrices so that fibers may be made available for microscopic analysis. The improved method also directs laboratories to analyze the individual strata or layers and report a single result for each layer. The 1982 method provided that the analytical result for a multi-layered sample with discrete strata be reported as one result across all layers. Because the 1982 method allowed the result to be reported as one number, multi-layered samples which may contain asbestos in a single layer may have been reported by laboratories as nonasbestos-containing. *Ibid.*

Finally, the EPA Advisory indicates that, "[t]he EPA has made the determination that the improved method (the 1993 Method) is more capable of producing accurate results than the 1982 protocol and thus serves as a **preferred substitute method.**" (emphasis added) *Ibid.*

The EPA followed the above-referenced Advisory with a guidance bulletin entitled, "Supplementary Guidance on Bulk Sample Collection Analysis" (U.S. EPA, OPPT/CMD (7404)). The guidance bulletin states that, "[t]he improved method [the 1993 Method] is especially useful for detecting the presence of asbestos in asbestos-containing floor tiles, but it also provides better analytical results in building materials that may contain asbestos at low concentrations," adding that, "[b]oth EPA's AHERA [Asbestos Hazard Emergency Response Act] program for schools and the EPA asbestos NESHAP [National Emission Standard for Hazardous Air Pollutants] program **recommend the adoption of the improved bulk sample analysis method published by the EPA's Office of Research and Development in July 1993 (EPA/600/R-93/116).**" (emphasis added) U.S. EPA, OPPT/CMD (7404).

Based on recent inspections of construction sites throughout the State, the Departments have reason to believe that contractors, including those working in the area of school construction, may be removing asbestos-containing bulk building materials, including floor tiles, without first

obtaining the required license from the Department of Labor and Workforce Development and without adhering to the license performance/safety standards set forth within N.J.A.C. 8:60 and 12:120. This situation is extremely dangerous and presents a grave risk to the health and safety of New Jersey citizens; especially, children and teachers who would be the end-users of repaired and/or reconstructed schools which contain precisely the types of materials, most notably, floor tiles, which are targeted by the more reliable 1993 Method for the detection of asbestos. The reason for this circumstance is apparently that contractors are utilizing the less precise 1982 Method for analysis of bulk building materials, which is yielding false-negative results for the presence of asbestos. These contractors have chosen to adhere to the strict letter of the Federal regulations, utilizing the less precise 1982 Method which appears in the Code of Federal Regulations at 40 CFR Part 763, Appendix E to Subpart E, rather than adopting the state-of-the-art 1993 Method which is not an official EPA standard, but rather, has been "recommended" by both the EPA's AHERA program for schools and the EPA asbestos NESHAP program. The emergency adopted and concurrent proposed amendments and new rules to N.J.A.C. 8:60 and 12:120 are intended to establish unequivocally that the Departments have adopted and are utilizing the 1993 Method for the determination of asbestos in bulk building materials for purposes of inspecting worksites and determining whether employers must comply with the provisions of N.J.A.C. 8:60 and 12:120. An indirect consequence of the emergency adopted and concurrent proposed amendments and new rules would be that contractors will either follow the Departments' lead and abandon use of the less precise 1982 Method in favor of the preferred 1993 method for determination of asbestos in bulk building materials, or they will run the risk of being assessed fines and penalties, including license revocation, where appropriate, when it is determined by the Departments using the 1993 Method that the contractors are removing asbestos-containing materials without the required licensure and/or in a manner which is inconsistent with the license performance/safety standards set forth within N.J.A.C. 8:60 and 12:120.

The emergency adopted and concurrent proposed amendments and new rules include the following:

The Departments are amending the definition of the term "TEM" or "transmission electron microscopy," which appears within N.J.A.C. 8:60-2.1 and 12:120-2.1, so as to incorporate the meaning of that term as it relates both to the analysis of bulk building materials and to the analysis of air samples. The existing definition only addresses air sample analysis. The new definition will state that TEM or transmission electron microscopy is an analytical technique which utilizes an electron microscope for identification and quantitation of asbestos in a sample. The definition will indicate that for asbestos bulk sample analysis, the analytical procedures for TEM are prescribed in the 1993 Method. With regard to asbestos air sample analysis, the definition will state that the analytical procedures for TEM are prescribed in 40 CFR Part 763, Subpart E, Appendix A to Subpart E — "Interim Transmission Electron Microscopy Analytical Methods — Mandatory and Non-mandatory — And Mandatory Section to Determine Completion of Response Actions."

The Departments are amending N.J.A.C. 8:60-3.2 and 12:120-3.2 so as to add a new subsection (b), which states that for purposes of determining whether an employer is performing any of the functions of application, enclosure, repair, removal or encapsulation of asbestos in any structure, or entering into any contract with the owner or owner's representative for the employer to perform such work and, therefore, whether the employer is required to comply with the provisions of N.J.A.C. 8:60 and 12:120 and be issued a nontransferable license by the Commissioner of Labor and Workforce Development, the Department of Labor and Workforce Development and the Department of Health and Senior Services shall analyze all bulk samples obtained to determine the presence of asbestos utilizing the "Test Method — Method for the Determination of Asbestos in Bulk Building Materials," EPA/600/R-93/116, July 1993, incorporated herein by reference, as amended and supplemented.

New subsection (b) will also state that the Departments shall utilize the 1993 Method in the manner prescribed within the Appendix to the chapter. The Appendix is being added by emergency adoption and concurrent proposal. It explains that, in accordance with the 1993 Method, the Departments will not test every sample utilizing TEM, but

rather, will use TEM only where the less precise PLM analysis indicates that a sample contains one percent or less than one percent asbestos (and, therefore, is considered not to be "asbestos-containing material"). It is important for the regulated community to understand that, pursuant to the 1993 Method, the more precise TEM analysis need only be utilized when necessary to ensure that results of one percent or less than one percent asbestos obtained using PLM are not erroneous.

Finally, the Departments are amending N.J.A.C. 8:60-9.1 and 12:120-9.1 so as to include the "Test Method — Method for the Determination of Asbestos in Bulk Building Materials," EPA/600/R-93/116, July 1993, as new number "10" on the list of standards and publications referred to within the chapter.

As the concurrent joint proposed amendments and new rules involve an imminent peril subject to the provisions of N.J.S.A. 52:14B-4(c), this rulemaking is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)3.

Social Impact

The emergency adopted and concurrent proposed amendments and new rules would have a positive social impact in that they would ensure the use of the most precise, state-of-the-art, state-of-the-science, analytical method for determining the presence of asbestos in bulk building materials when assessing whether a contractor is applying, enclosing, repairing, removing or encapsulating asbestos and, therefore, whether he or she is subject to the requirements of N.J.A.C. 8:60 and 12:120. The emergency adopted and concurrent proposed amendments and new rules would protect the health and safety of workers on-site at such construction projects who might otherwise inhale undetected asbestos particles. The emergency adopted amendments and concurrent proposed amendments and new rules would protect the health and safety of citizens, including children, who live, work and play in the same geographical area as such construction projects who might also otherwise inhale undetected asbestos particles. Finally, the emergency adopted and concurrent proposed amendments and new rules would protect the health and safety of citizens, including, in the case of school construction, children and teaching, administrative and maintenance staff (public employees), who would inhabit the repaired or reconstructed facilities after the completion of such construction projects, which, but for the use of the 1993 Method for detection of asbestos in bulk building materials, might be contaminated with hazardous asbestos.

With regard to the amended definition of the term TEM as it relates to the analysis of air samples, all interested parties will benefit from the Departments' replacement of the NIOSH standard with the appropriate Federal regulatory standard so as to ensure consistency with N.J.A.C. 8:60-4.7 and 12:120-4.7.

Economic Impact

For the State, which under the emergency adopted and concurrent proposed amendments and new rules would be required to utilize the 1993 Method rather than the 1982 Method for the detection of asbestos in bulk building materials, and for contractors who choose to follow the State's lead in this regard (or risk the assessment of fines and penalties), in instances where the 1993 Method calls for the use of TEM, rather than PLM, the additional cost per sample would vary from laboratory to laboratory, but on average would be approximately \$30.00 to \$40.00. With regard to the frequency with which TEM will be used under the 1993 Method, as indicated in the Summary above, the proposed chapter Appendix explains that the Departments will not test every sample utilizing TEM, but rather, will use TEM only where the less precise PLM analysis indicates that a sample contains one percent or less than one percent asbestos.

As a result of the emergency adopted and concurrent proposed amendments and new rules and the resulting use of the more precise 1993 method for the detection of asbestos in bulk building materials, there could possibly be an increase in the detection of asbestos in bulk building materials during any phase of a construction project. Therefore, there could possibly be an increase in the frequency with which the services of contractors and subcontractors licensed under N.J.A.C. 8:60 and 12:120 would be required for the removal of bulk building materials. Should this increase in the detection of asbestos in bulk building materials occur, associated increased costs would include the expense of hiring licensed

contractors who, pursuant to N.J.A.C. 8:60 and 12:120, must satisfy the Departments' eligibility criteria. That criteria includes, but is not limited to, providing evidence that the applicant operates pursuant to standard operating procedures which demonstrate, "capability, competence and knowledge," and which address issues of respiratory protection, personal protective equipment, engineering methods and controls, waste handling and disposal, decontamination, safety considerations and emergency procedures, and detailed abatement procedures for specific asbestos-containing materials. In addition, licensed contractors are required to use workers and supervisors who have obtained permits under N.J.A.C. 8:60-5 and 12:120-5. These costs, however, would be incurred not as a result of the emergency adopted and proposed amendments and new rules, but rather, as a result of the contractor's obligation under N.J.S.A. 34:5A-36 to obtain a nontransferable license from the Commissioner of Labor and Workforce Development before directly or indirectly performing any of the functions of application, enclosure, removal or encapsulation of asbestos in any structure or before entering into any contract with the owner or the owner's representative for the employer to perform such work or services. N.J.S.A. 34:5A-34 defines the term "asbestos" to mean, "the asbestiform varieties of chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite, and actinolite." N.J.S.A. 34:5A-34 further defines the term "asbestos-containing material" to mean, "any material which contains more than 1 percent asbestos by weight." Consequently, it is the fact that material containing more than 1 percent asbestos by weight (asbestos-containing material) is being removed from a particular worksite and not the testing methodology being used to detect the presence of asbestos, which results in any construction costs associated with utilizing the services of a contractor licensed under N.J.A.C. 8:60 and 12:120.

Moreover, whatever possible costs are associated during any phase of a construction project with the use of licensed contractors for the proper removal of asbestos-containing bulk building materials would be significantly offset by the savings which result from not having to undergo expensive decontamination procedures after a construction project has been completed where it is ultimately determined that asbestos has been removed improperly.

The positive economic impact of the emergency adopted and concurrent proposed amendments would be the following: (1) building owners would benefit from the assurance that laboratories are employing the appropriate analytical methodology so as to ensure that all asbestos is accurately identified, thereby reducing cleanup and removal costs attributed to improper removal of asbestos-containing building materials; (2) contractors and consultants would benefit from the elimination of possible administrative actions (and the fines and penalties associated therewith) taken by the Departments against them for failure to properly identify all asbestos-containing materials; (3) workers would benefit economically from the proper identification of asbestos-containing materials and the resulting savings in health care costs which might otherwise be incurred due to asbestos-related ailments; (4) building occupants would benefit similarly from lack of exposure to asbestos due to misidentification of materials and; (4) the general public would benefit economically from reductions in wage loss, insurance premiums, medical expenses, disability compensation payments and other costs attributable to asbestos-related disabilities.

With regard to the amendment to the definition of the term TEM as it relates specifically to the analysis of air samples, the cost per sample of utilizing the procedure outlined within 40 CFR Part 763, Subpart E, Appendix A to Subpart E, is less than the cost associated with using NIOSH method 7402.

Federal Standards Analysis

The emergency adopted and concurrent proposed amendments and new rules would technically exceed Federal standards in that although the EPA "recommends" use of TEM, where appropriate, in accordance with the 1993 Method when analyzing bulk samples for the presence of asbestos, it does not require it. Rather, the EPA requires only the use of PLM when analyzing bulk samples for the presence of asbestos, in accordance with the 1982 Method, which appears at 40 CFR Part 763, Appendix E to Subpart E.

The single amendment to the definition of the term "TEM" within N.J.A.C. 8:60-2.1 and 12:120-2.1, which pertains to the testing of air samples, is consistent with the appropriate Federal standard, in that through the amendment the Departments have adopted 40 CFR Part 763, Subpart E, Appendix A to Subpart E, in place of NIOSH method 7402. Consequently, no Federal standards analysis is required with regard to that particular amendment.

Regarding those amendments and new rules which pertain to the testing of bulk samples, it is the belief of the Department that the considerable social and economic benefits associated with the emergency adopted and concurrently proposed amendments to and new rules at N.J.A.C. 8:60 and 12:120, which are listed in detail within the Social and Economic Impact statements above, far outweigh the relatively small potential costs (discussed in detail within the Economic Impact statement above) to the Departments and to contractors which could potentially result from those amendments.

Jobs Impact

The emergency adopted and concurrent proposed amendments and new rules would not result in the generation or loss of jobs in the State.

Agriculture Industry Impact

The emergency adopted and concurrent proposed amendments and new rules would not have an impact on the agriculture industry of the State.

Regulatory Flexibility Analysis

The emergency adopted and concurrent proposed amendments and new rules would impose no reporting or recordkeeping requirements on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The emergency adopted and concurrent proposed amendments and new rules would also not technically impose compliance requirements on such small businesses, since the only parties required under the amendments to utilize the more precise 1993 Method for determining the presence of asbestos in bulk samples would be the Department of Labor and Workforce Development and the Department of Health and Senior Services; not any individual contractor or other small business. However, as mentioned above, the practical impact of the State's use of TEM testing, where appropriate, to determine whether materials at a given worksite contain asbestos and, therefore, whether the contractor must be licensed by the Department of Labor and Workforce Development under N.J.S.A. 34:5A-32 et seq. and the rules promulgated in accordance therewith, N.J.A.C. 8:60 and 12:120, in order to perform work on the site, will likely be that contractors, many of whom are small businesses, will utilize the preferred 1993 Method, rather than using the less precise 1982 method, when analyzing bulk samples for the presence of asbestos so as to avoid being assessed fines and penalties for noncompliance. The anticipated costs associated with utilizing the 1993 method, including the differential cost for laboratory (professional) services relative to performing TEM testing as opposed to PLM testing, are discussed in the Economic Impact statement above.

Smart Growth

The emergency adopted and concurrent proposed amendments and new rules would have no impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the emergency adoption and concurrent proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

12:120-2.1 (8:60-2.1) Definitions

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

"TEM" or "transmission electron microscopy" means [the scientific method of air sampling analysis for the purpose of definitively determining airborne asbestos fiber concentrations structures per cubic centimeter (s/cc) of air as well as the type of asbestos identified. This analytical method is to be consistent with the National Institute of Occupational Safety and Health (NIOSH) method 7402 as referenced in the 4th Edition, August 15, 1994 with addenda of the NIOSH Manual of Analytical Methods] **an analytical technique which utilizes an electron**

microscope for identification and quantitation of asbestos in a sample.

1. For asbestos bulk sample analysis, the analytical procedures for TEM are prescribed in the "Test Method — Method for the Determination of Asbestos in Bulk Building Materials," EPA/600/R-93/116, July 1993, incorporated herein by reference, as amended and supplemented.

2. For asbestos air sample analysis, the analytical procedures for TEM are prescribed in 40 CFR Part 763, Subpart E, Appendix A to Subpart E — "Interim Transmission Electron Microscopy Analytical Methods — Mandatory and Non-mandatory — And Mandatory Section to Determine Completion of Response Actions," incorporated herein by reference, as amended and supplemented.

12:120-3.2 (8:60-3.2) Compliance

(a) (No change.)

(b) For the purpose of determining under (a) above whether an employer is performing any of the functions of application, enclosure, repair, removal or encapsulation of asbestos in any structure, or entering into any contract with the owner or owner's representative for the employer to perform such work and, therefore, whether the employer is required to comply with the provisions of this chapter and be issued a nontransferable license by the Commissioner of Labor and Workforce Development, the Department of Labor and Workforce Development and the Department of Health and Senior Services shall, in the manner prescribed within the Appendix to this chapter, analyze all bulk samples obtained to determine the presence of asbestos utilizing the "Test Method — Method for the Determination of Asbestos in Bulk Building Materials," EPA/600/R-93/116, July 1993, incorporated herein by reference, as amended and supplemented.

Recodify existing (b) and (c) as (c) and (d) (No change in text.)

12:120-9.1 (8:60-9.1) Documents referred to by reference

(a) The full title and edition of each of the standards and publications referred to in this chapter are as follows:

1.-9. (No change.)

10. "Test Method — Method for the Determination of Asbestos in Bulk Building Materials," EPA/600/R-93/116, July 1993.

APPENDIX

For the purpose of analyzing bulk building materials, the Department of Labor and Workforce Development and the Department of Health and Senior Services shall utilize the "Test Method — Method for the Determination of Asbestos in Bulk Building Materials," EPA/600/R-93/116, July 1993, in the following manner:

1. Samples shall be prepared using the gravimetric sample preparation procedures.

2. Samples shall be analyzed first by Polarized Light Microscopy (PLM).

3. In the event that the results of PLM analysis indicate that a sample contains less than or equal to 10 percent asbestos, the sample *shall be point counted*.

4. Only where PLM analysis indicates that a sample contains one percent or less than one percent asbestos (including findings that a sample contains no asbestos), shall the sample be analyzed by Transmission Electron Microscopy (TEM).